



**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL**

ANNUAL REPORT

**OF THE
HOME BUILDER REGISTRATION UNIT
CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL**

**SUBMITTED TO THE
GOVERNOR AND GENERAL ASSEMBLY
OF MARYLAND**

NOVEMBER 2003

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I. **EXECUTIVE SUMMARY**

Prior to January 1, 2001, home builders were not required to be registered or licensed by the State of Maryland.¹ Existing laws provided partial protections for home buyers by focusing on protection of the buyer's deposit, required contract provisions and disclosures, and prescribed terms of non-mandatory home warranty security plans.² The General Assembly heard testimony from home buyers about problems they faced with their builders that were not being adequately prevented or resolved by the then current law. In response to this testimony, the General Assembly in the 2000 Session passed the Maryland Home Builder Registration Act (the "Act" or "HBRA"). The HBRA is designed to provide additional protections to new home buyers by requiring builders to register with the State and by providing an enforcement mechanism that will allow the State to prevent builders with a bad track record from continuing to build in Maryland.

The Home Builder Registration Unit (the "Unit") of the Consumer Protection Division of the Office of the Attorney General was created by the HBRA to administer and enforce the Act. The Act requires that the Consumer Protection Division make an annual report of its activities to the Governor and General Assembly on November 1st of each year. This is the third report since the law became fully operational on January 1, 2001.

The report focuses on the following areas:

- **Registration of Builders:** 2,866 builders were registered as of June 30, 2003. 512 of those builders registered between July 1, 2002 and June 30, 2003.

- **Registration Renewal:** From July 1, 2002 to June 30, 2003, the Unit mailed renewal applications to 2,084 builders whose registrations were due to expire by June 1, 2003. 1,651 of those builders have renewed their registration as of June 30, 2003.

- **Education of Builders and Consumers:** As of June 30, 2003, the Unit had distributed a total of 128,450 copies of *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*, met with home builders and consumers to educate them

¹ Montgomery County and Prince George's County have varying forms of builder licensing or registration.

² New Home Deposits, Md. Code Ann., Real Property §10-301 et seq., Custom Home Protection Act, Md. Code Ann., Real Property §10-501 et seq., and New Home Warranty Security Plans, Md. Code Ann., Real Property §10-601 et seq.

about their rights and responsibilities under Maryland law; and maintained and updated its website – www.oag.state.md.us/homebuilder – to give consumers, builders, permit offices and the public information about registered builders, building laws, and home building issues for consumers.

● **Coordination with Local Building Permit Offices:** The Unit continues to coordinate with local building permit offices to ensure that unregistered builders cannot obtain building permits and that builders with unresolved building code violations are reported to the Unit. Lists of registered builders are mailed to permit offices each month and are publicly available on the Unit's website.

● **Evaluation of Consumer and Builder Dispute Resolution:** The Division's Mediation Unit handled 207 consumer complaints involving 165 home builders between July 1, 2002 and June 30, 2003. The overwhelming majority of the complaints concerned claims about construction defects.

● **Law Enforcement:** The Unit opened 22 investigations between July 1, 2002 and June 30, 2003 after receiving reports of unregistered builders, violations of the Home Builder Registration Act, the Consumer Protection Act, or violations of the Custom Home Protection Act. In one action, the Unit settled a case with a Delaware builder that had ceased operations and filed bankruptcy. The builder and its principals agreed to pay the Consumer Protection Division \$140,000 in restitution for homes not completed and to be held liable for \$76,879.58 in restitution for outstanding consumer deposits. Charges have been brought in two other cases and the Unit denied the registration or renewal of three builders. Most of the investigations have been resolved by having the builder register or determining that the builder is no longer building in Maryland and is not required to register.

● **Deposit Protection and Home Warranty Programs:** During the 2002 Session, the General Assembly transferred to the Unit responsibility for two programs previously overseen by the Department of Labor, Licensing and Regulation. The first program concerns the requirement that builders of new and custom homes protect consumer deposits by placing those deposits in an escrow account or by posting a surety bond or letter of credit. The second program involves the registration of new home warranty programs. The Unit has developed and adopted new regulations for surety bonds and letters of credit and is collecting more data about new home warranty security plans.

II. REGISTRATION OF BUILDERS

A. THE HOME BUILDER REGISTRATION UNIT

A central requirement of the HBRA is that all new home builders in Maryland register with the Unit. The Home Builder Registration Unit was created by the HBRA to administer and enforce the Act. A special fund was created to fund the Unit's activities, which is paid for through the collection of registration fees. The HBRA sets the initial registration fee paid by builders at \$600 for a two-year registration. The Act further provides for renewal fees for an additional two-year period of \$300 for builders who were issued 10 or fewer building permits during the preceding year and of \$600 for builders who were issued 11 or more permits during the preceding year. The Home Builder Registration Fund is used solely to fund the direct and indirect costs of the Home Builder Registration Unit. HBRA §4.5-203, §4.5-303, §4.5-305. The Division's costs for the Unit include salary, benefits, and administrative costs for a four-person unit; production and distribution of the consumer education pamphlet; continued maintenance of the website and data systems; and perhaps most importantly, enforcement costs. The Unit's four positions include: a Director/Assistant Attorney General, an Administrator, an Investigator, and a Secretary.

B. BUILDER REGISTRATION AND RENEWAL UNDER THE HBRA

The Act establishes a registration procedure that requires the disclosure by the builder of necessary information to the Unit, and the payment of the required registration fee. The Act does not provide for competency testing or proof of financial responsibility. The Unit has implemented the registration requirements with an objective of making registration an easy and quick procedure.

To register, builders are required to complete an application form, provide information about the principals of the company and past legal proceedings involving the builder, and pay the registration fee of \$600. Each builder's registration lasts two years and expires on one of four quarterly dates based upon the date the builder initially registered: March 1, June 1, September 1, or December 1. Having registrations expire quarterly makes it easier for builders, permit offices, consumers and the Unit to keep track of whether builders are currently registered and when registrations expire. The Unit mails a renewal application to the builder's last known address at least 60 days before the registration expires.

The application provides the Unit with general information about the company or entity that is registering. It also provides the Unit with information about each

"principal" of the company, which the HBRA defines to be persons with at least a 10% ownership interest, and directors, partners, officers and managers of the company. One of the purposes of the Home Builder Registration Act is to track builders who dissolve entities without meeting their financial obligations and then begin building again under a new company name. Such builders may be subject to denial or revocation of their registration under HBRA §4.5-308. To achieve this goal, the Unit must gather information from the applicants about the principals who own and operate building companies.

As of June 30, 2003, 2,866 home builders were registered with the Unit. Although the significant majority registered in late 2000 and early 2001 when the program first began, the Unit continues to receive registration applications from new builders on a daily basis. 512 builders registered with the Unit between July 1, 2002 and June 30, 2003.

In the past year, the Unit mailed renewal applications to the first 2,084 builders that registered under the HBRA, whose initial two year registrations were due to expire on either March 1, 2003 or June 1, 2003. As of June 30, 2003, 1651 builders have mailed in their renewal requests and have been approved for renewal. 416 builders did not request renewal (141 notified the Unit that they were not renewing and 275 did not submit a renewal application) and 17 renewal requests are under review.

C. WHO ARE MARYLAND'S BUILDERS?

The HBRA defines "home builder" and "new home" broadly to ensure that all new home builders in Maryland must be registered. HBRA §4.5-101(f) and (k). The exceptions to the HBRA are narrowly drawn.³ Information provided by builders in the registration process, combined with other available data, provides the following profile of Maryland Builders:

● **Number of Builders:** There were 2,866 registered builders in Maryland as of June 30, 2003. 512 of those builders registered between July 1, 2002 and June 30, 2003 and the Unit continues to receive new applications daily.

³ The HBRA excludes from registration employees, subcontractors and vendors of a registered home builder; the manufacturer of industrialized buildings unless the manufacturer also installs the building; real estate developers who do not also construct homes; construction financiers; and builders who build solely in Montgomery County. HBRA §4.5-101(f)(3). Landowners who obtain building permits in their own name and who directly perform the construction on their own land for their own use are also exempted. HBRA §4.5-601.

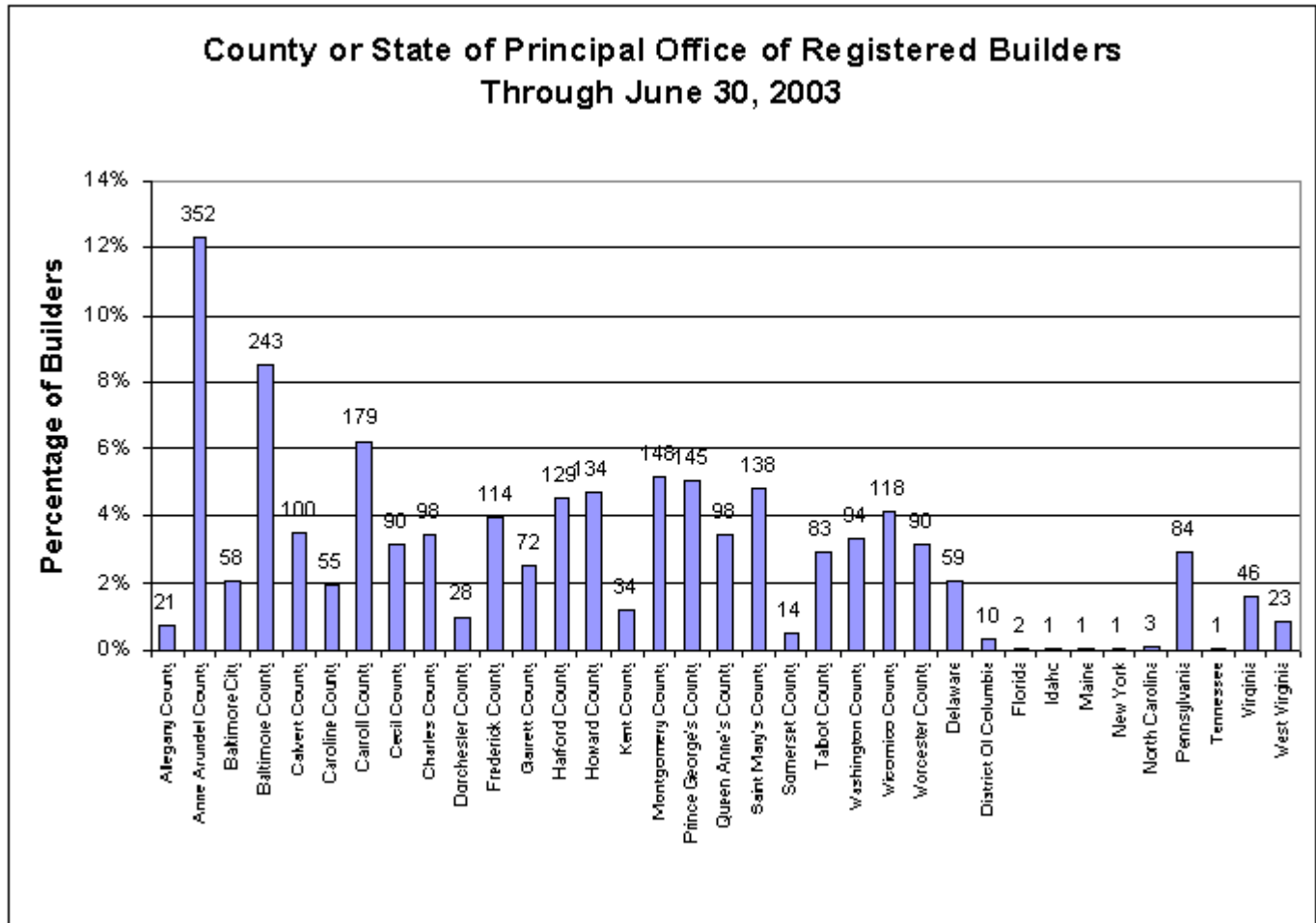
- **Type of Construction:** The vast majority – 84% – of Maryland’s builders report that they build new homes, custom homes or condominiums. Another 4% report they build industrialized buildings, and 3% report they build mobile homes. (The remaining 9% did not report).
- **Form of Business:** The majority (55%) of Maryland’s builders use corporations as their form of business organization. Another 21% are sole proprietorships, 19% are limited liability companies (LLCs), and 3% are partnerships. 2% did not report the form of their business.
- **Location of Builders and Housing Construction:** Not surprisingly, Maryland’s builders continue to be located in the regions of Maryland that are experiencing the most new home building activity, as measured by the number of single family housing permits issued: 64.7% of building permits for single family construction were issued in the Washington Suburban Region and in the Baltimore Region, where 52.5% of Maryland’s builders are headquartered. Both the Upper Eastern Shore and Southern Maryland Regions continue to show increases in the percentage of builders headquartered there (24.3% vs. 22.3% last year). The Lower Eastern Shore Region also saw an increase in the number of permits for new homes issued (7.8% vs. 5.9% last year). Following the drop experienced in 2002 (from 14%), the percentage of builders who registered in Maryland but were headquartered in other states remains relatively consistent (8.0% vs. 8.1% last year).

The following chart shows the headquarters of builders in each region, the number of single family housing permits issued in each region from July 1, 2002 through June 30, 2003, and the percentage of the total number of single family housing permits issued in Maryland in each region during that period.

Region	Percentage of Builders With Headquarters in Region	Number of Permits Issued in Region (7/1/02 - 6/30/03)	Percentage of State-wide Permits Issued in Region
Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	38.3%	8,388	34.4%
Suburban Washington Region (Frederick, Montgomery, Prince George's)	14.2%	7,366	30.3%
Upper Eastern Shore Region (Caroline, Cecil, Kent, Queen Anne's, Talbot)	12.6%	2,256	9.3%
Southern Region (Calvert, Charles, St. Mary's)	11.7%	3,052	12.5%
Lower Eastern Shore Region (Dorchester, Somerset, Wicomico, Worcester)	8.7%	1,895	7.8%
Out of State (Pennsylvania, Delaware, Virginia, West Virginia, Washington, D.C., Massachusetts, New York, North Carolina, Tennessee)	8.0%		
Western Region (Allegany, Garrett, Washington)	6.5%	1,389	5.7%
Totals	100%	24,346	100%

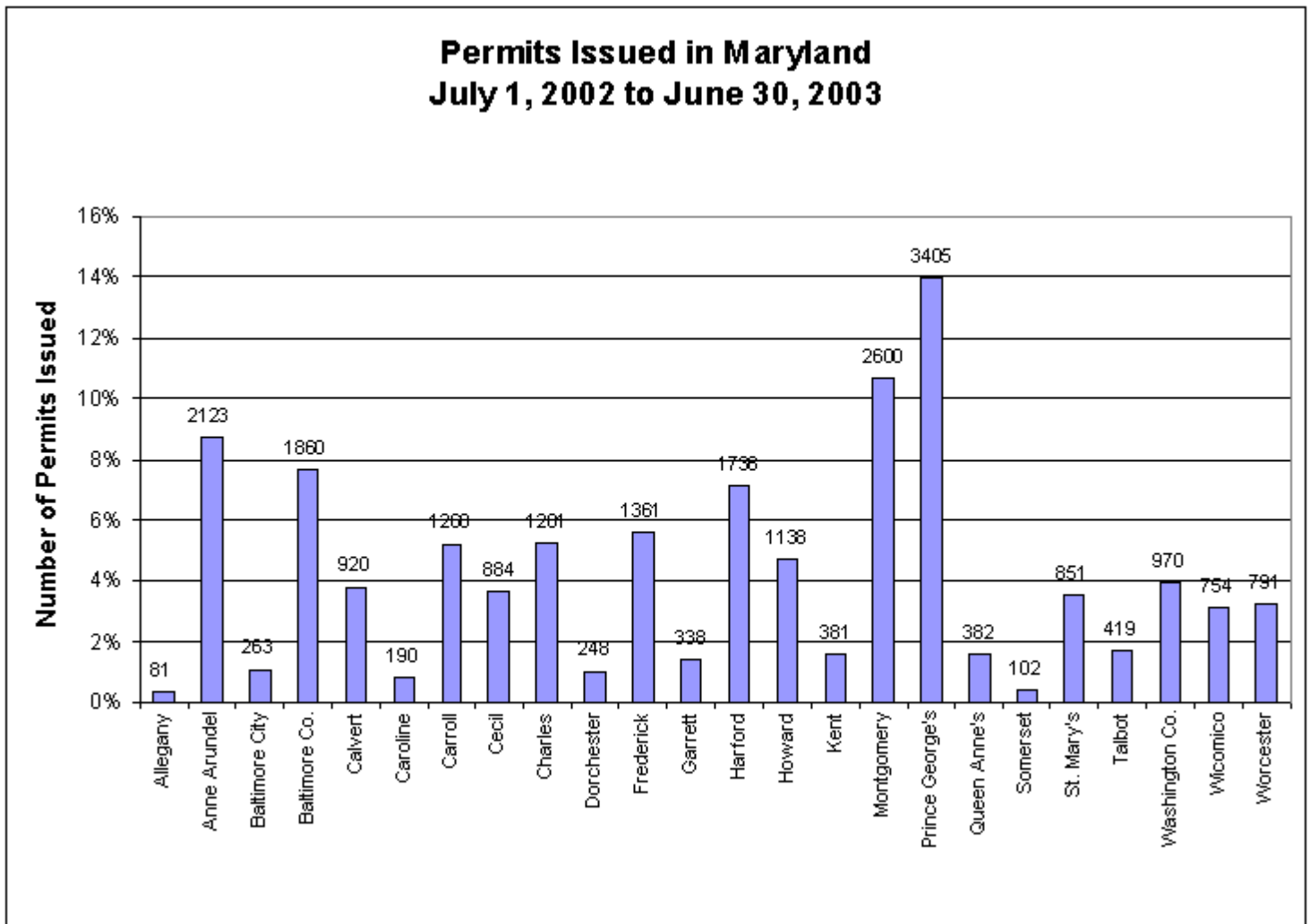
Source: HBRU and Md. Dept. of Planning, for Single Family Permits Issued July 1, 2002 through June 30, 2003

The following graph shows the breakdown of builders' headquarters for each county and state:



Source: HBRU

The following chart shows the number of permits issued in each county from July 1, 2002 through June 30, 2003.



Source: Md. Department of Planning data

III. **COMMUNICATION WITH BUILDERS AND CONSUMERS**

A. **OUTREACH TO BUILDERS**

The Home Builder Registration Unit continued to travel throughout the State to meet with builders and consumers about issues related to new home builders. The Unit participated in a workshop in Waldorf with builders and representatives of the manufactured housing industry about issues particular to their industry, and with other government agencies in a workshop in Essex for consumers rebuilding structures damaged by Hurricane Isabel.

The Unit has also continued to correspond with builders to keep them updated about issues affecting them. Letters were sent to all builders alerting them about changes to the law including the changes to the deposit protection requirements, new home warranty program and renewal fee schedule.⁴ The Unit writes to builders notifying them that their registration will be expiring in three months and providing them with the information and forms they will need to renew their registrations. The Unit also handled numerous builder inquiries by phone and by e-mail about the Home Builder Registration Act's registration and renewal processes.

B. **CONSUMER EDUCATION PAMPHLET**

The HBRA required that the Unit develop a consumer information pamphlet describing the rights and remedies of consumers in the purchase of a new home and providing any other information that the Division considers reasonably necessary to assist consumers in the purchase of a new home. The law further requires that the consumer information pamphlet be given to consumers by builders before they sign a contract to purchase a new home and that the receipt of the consumer information pamphlet shall be acknowledged in writing. HBRA §4.5-202(c).

The Division consulted with the industry, and developed and published a consumer education pamphlet, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*, in December, 2000. The Unit also drafted and distributed a model form for the consumer to sign to acknowledge receipt of the pamphlet. The Unit recently updated the pamphlet to reflect recent changes to the law. A copy of the revised pamphlet is attached.

⁴ In 2002, the General Assembly passed Chapters 492 and 530 transferring responsibility for administering builder's surety bonds and letters of credit, and for new home warranty security plans, from the Department of Labor, Licensing and Regulation to the Home Builder Registration Unit, and also changing the fee schedule for renewal of registration.

As of June 30, 2003, the Unit had distributed a total of 128,450 consumer information pamphlets to builders.

C. **HBRU WEBSITE**

The Home Builder Registration Unit has maintained and updated its website to make information readily available to consumers, builders, permit offices and other entities requiring information about the home building industry. The website has been operational since January, 2001 and is updated regularly as information changes. Since the website can be accessed by anyone with Internet access, it is a significant mode of outreach and is an education resource for both consumers and builders. The Unit has added to the website the ability to search for builders either by the name of the builder or by registration number. The website address is www.oag.state.md.us/homebuilder. On the website can be found:

- Information about the Home Builder Registration Unit, the Home Builder Registration Act, and the responsibility of builders pursuant to the Act.
- A list of currently registered builders that can be searched either by builder name or by registration number.
- Registration materials including all the registration forms.
- The Home Builder Registration Act and other applicable laws.
- The consumer information pamphlet developed by the Home Builder Registration Unit, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*.
- The Builder New Home Disclosure Form
- A sample Surety Bond that builders can use for the protection of consumer deposits.
- A sample Letter of Credit that builders can use for the protection of consumer deposits.
- The 2002 Annual Report of the Home Builder Registration Unit.
- The 2001 Annual Report of the Home Builder Registration Unit.

The Unit is currently working on a project to enable builders to file their registration forms over the Internet.

IV. **COORDINATION WITH LOCAL PERMIT OFFICES**

Permit offices play a pivotal role in the regulatory scheme of the Home Builder Registration Act. First, the building and permits department of a county may not issue a permit for home building unless the permit includes the home builder registration number of a registrant. HBRA § 4.5-601. This is the critical first line of defense against unregistered builders. Second, local permit offices are required to notify the Unit about any builder who, within a reasonable period of time, fails to correct a building code violation.

The Unit has communicated regularly with 42 local and municipal permit offices across the state. An informational letter and copies of the registration packets were provided to the offices for distribution to builders in need of registration. The Unit continues to send out printed copies of the lists of registered builders to local permit offices on a monthly basis and communicates with them regularly. Additionally, permit offices are encouraged to check the Unit's website to find out if a builder applying for a permit is registered.

V. **EVALUATING CONSUMER AND BUILDER DISPUTE RESOLUTION**

The Home Builder Registration Act requires that the Unit "collect and maintain information on the resolution of consumer complaints involving new home builders." HBRA §4.5-202(d). Although there is no central repository of information about consumer/builder disputes, consumer complaints filed with the Mediation Unit of the Consumer Protection Division are illustrative.

Between July 1, 2002 and June 30, 2003, the Mediation Unit of the Consumer Protection Division handled 207 written consumer complaints filed against 165 different home builders. When a consumer complaint is filed with the Consumer Protection Division, a mediator from the Mediation Unit contacts both the builder and consumer and assists them in resolving their dispute. A mediated agreement is possible only if both parties can agree upon mutually acceptable terms. A mediation is considered successful if it results in a mediation agreement. The Division also offers arbitration at no cost to the parties if the builder and consumer are unable to resolve the complaint through mediation and both the builder and consumer agree to submit their dispute to arbitration.

Of the 207 written complaints, 134 were mediated by the Division's Mediation Unit; 4 were arbitrated; 23 were filed for information only; 16 were resolved by the consumers without mediation by the Division; 12 were closed after the Division provided advice to the consumer; 1 was referred for investigation; 2 were referred to other agencies having jurisdiction; and 15 had other miscellaneous resolutions. 69 of the 134 complaints mediated by the Division resulted in positive relief for consumers, such as the defects being corrected by the builder or money being paid to the consumer. The total amount of money or savings obtained for consumers in these 69 complaints was \$54,242.09.

The 207 written complaints raised the following issues (many complaints included more than one issue):

- *Construction Defect Issues* (582), including interior finishing (100), electric or plumbing problems (74), exterior shells (73), external structures (69), landscaping (65), foundation or basement defects (58), HVAC issues (39), roofing issues (34), and appliances (7);
- *Deposit Issues* (46), including consumers seeking return of their deposits after being denied financing or withdrawing from their contract for other reasons;
- *Coverage by Home Warranty Security Plans* (26);
- *Misrepresentation Claims* (22), including claims that the finished home was not constructed in the manner promised by the builder;
- *Incomplete Construction* (16), including disputes between the builder and owner about whether construction has been completed;
- *Construction Delays* (12);
- *Contract violations* (11);
- *Subcontractors* (11), including failure to pay or identify subcontractors; and
- *Registration Issues* (5).

Consumers also filed complaints against builders with the Montgomery County Office of Consumer Affairs and with the Howard County Office of Consumer Affairs. Between July 1, 2002 and June 30, 2003, there were 68 complaints filed in Montgomery County of which 17 were resolved, 6 were unresolved, 14 were withdrawn or referred for lack of jurisdiction, 3 in which legal action was taken, 6 in which administrative action was taken, and 22 that are currently pending. In Howard County, 17 complaints were filed, of which 13 were resolved, 1 was unresolved, and 3 were referred for other disposition.

VI. **LAW ENFORCEMENT**

The Home Builder Registration Act provides an enforcement mechanism with the objectives of (1) keeping unregistered builders from building in Maryland and (2) preventing registered builders who establish a bad track record of unresolved disputes or legal violations from continuing to build in Maryland.

To accomplish these objectives, the HBRA prohibits unregistered builders from building and authorizes the Unit to use civil administrative proceedings to seek a cease and desist order and a civil penalty of up to \$1,000 per day of unregistered practice. HBRA §§ 4.5-501 and 4.5-502. In addition, the HBRA provides that the Unit may deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty if the Unit determines that the applicant or registrant has engaged in any of the specified practices stated in HBRA 4.5-308.

The Unit opened 22 investigations between July 1, 2002 and June 30, 2003. These investigations involved allegations of violation of the HBRA, other building related laws, or the Consumer Protection Act. Six of these investigations have now been closed, enforcement actions have been taken in another five, and twelve remain under continuing investigation. The Unit receives information from many sources, including consumers, other builders, and permit offices. The results of these enforcement actions are summarized as follows:

- The Unit obtained a Proposed Decision from the Office of Administrative Hearings against a home builder from Delaware who is not registered, but who contracted to build a home for a consumer in Baltimore County, and took \$56,847 in payments. The Proposed Decision recommended that the Division Order the builder to pay restitution and a civil penalty. The builder never completed construction of the home and constructed so poorly the portions that were done that the code department for the county issued a stop work order. The consumer had to pay additional monies to repair the faulty work done by builder and to hire outside subcontractors to finish the house.
- The Unit settled a case with a Delaware builder and its principals that had ceased operations and filed bankruptcy. The builder and its principals agreed to pay restitution in the amount of \$140,000 to the Consumer Protection Division for consumers (1) whose cost to complete their homes that the builder failed to complete exceeded any payments due to the builder under the consumer's contract; or (2) who paid amounts to make repairs that the builder was required to repair under the consumer's contract. The builder and its principals also agreed to be jointly and severally liable for payment to the

Division of restitution in the amount of \$76,879.58 for outstanding consumer deposits.

- The Unit sought and obtained a cease and desist order against an unregistered home builder who took \$27,300 from a Prince George's County consumer to build a custom home but never began construction, failed to place the deposit in an escrow account, and didn't refund the deposit, as required by law.
- The Unit obtained a cease and desist order against a Prince George's County home builder who it alleges took \$7,539 from a customer to build a custom home but never began construction, and who is not registered as a home builder with the State, as required.
- The Unit's decision to deny a builder's registration application was upheld in two cases. In both cases, the Unit determined that the builders deceptively attempted to obtain a Home Builder Registration by failing to disclose significant facts, including unsatisfied judgments, in their registration applications. In one case, the Unit obtained a final order from the Consumer Protection Division upholding its denial and in the other, the Unit obtained a Proposed Decision from the Office of Administrative Hearings, upholding its denial.
- The Unit settled with the owners of an Easton-based home building company whose application to renew registration was denied for failure to disclose lawsuits in which the builder was involved, an unsatisfied consumer judgment, and liens on the builder's application. The agreement allowed for the renewal of the builder's registration provided that, prior to renewal, the builder and its principals satisfy all outstanding consumer judgments and post a surety bond payable to the State in the amount of \$200,000 for the benefit of consumers incurring problems with their building activities. The builder and its principals agreed to disclose on all consumer contracts that consumers may file complaints with the Division. They also agreed to arbitrate any consumer complaints that cannot be resolved through mediation, using the Consumer Protection Division's arbitration program. Finally, they agreed to report to the Division any and all matters pertaining to new home building including complaints, warranty claims, stop work orders, permit violations and environmental violations.

VII. LEGISLATIVE CHANGES

During the 2002 Session, the Maryland General Assembly addressed concerns raised by smaller builders that they should not be paying the same registration fee as larger builders by enacting Chapter 530, which became effective January 1, 2003. Under the new law, all builders continue to pay an initial registration fee of \$600 for a two-year period. However, upon renewal of that registration, a builder who was issued ten or fewer permits for the construction of new homes during the preceding year will pay a renewal fee of only \$300 for an additional two year period. A builder who was issued 11 or more permits during the preceding year will pay a renewal fee of \$600 for an additional two year period.

Since the law became effective, the Home Builder Registration Unit has mailed applications for renewal to 2084 builders whose registrations were due to expire by June 1, 2003. 1651 of those builders have renewed registration as of June 30, 2003. 1273 of those builders renewing paid the \$300 renewal fee for builders who were issued 10 or fewer permits during the preceding year. 370 of the builders renewing paid \$600 for having been issued 11 or more permits. An additional 512 builders were new registrants between July 1, 2002 and June 30, 2003 and paid an initial registration fee of \$600.

The General Assembly also enacted Chapter 492 during the 2002 Session. That law transferred responsibility to the Unit from the Department of Labor, Licensing, and Regulation for oversight of laws requiring builders of new and custom homes to protect deposits made by consumers by placing those deposits into an escrow account or by posting a surety bond or letter of credit. Md. Code Ann., Real Prop. §§ 10-301, *et seq.* and 10-501, *et seq.* Chapter 492 further transferred to the Unit responsibility for oversight of plans providing third-party warranties on new homes. Md. Code Ann., Real Prop. § 10-601, *et seq.* The Unit has developed and adopted new regulations for surety bonds and letters of credit and has developed a new application for collection of data about and for review of new home warranty security plans.